

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

CAPITOL SPECIALTY INSURANCE
CORPORATION

P. O . Box 5900
Madison, WI 53705-0900,

Plaintiff,

Civil Action No. 23-cv-000617

v.

USA ENVIRONMENTAL, LLC,
25395 Pleasant Valley Road
Suite 110
Chantilly, VA 20152-1403

Serve:

Registered Agents, Inc.
4445 Corporation Lane
Suite 264
Virginia Beach, VA 23462-3262

Defendant.

COMPLAINT

Plaintiff Capitol Specialty Insurance Corporation (hereinafter “Capitol”) hereby
files this Complaint against Defendant USA Environmental, LLC (“USA
Environmental”), and alleges as follows:

Nature of Action

1. This is a subrogation action wherein Plaintiff Capitol seeks equitable indemnification and/or contribution for monies paid as a result of negligently performed asbestos abatement services provided by USA Environmental, LLC.

Parties

2. Plaintiff Capitol is a Wisconsin insurance company which issued an Environmental Policy to Kapusaba, LLC d/b/a ServPro of North Arlington ("Kapusaba") and Smart Restoration Services, LLC d/b/a ServPro of North Arlington ("ServPro") for the period of January 1, 2022 to December 31, 2022.

3. Kapusaba and ServPro are companies which provide residential restoration services to individuals who have experienced fire, water or mold damage to their homes.

4. USA Environmental, LLC is a Virginia limited liability company which provides asbestos abatement services in Virginia.

Jurisdiction and Venue

5. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1322(a) as diversity of citizenship exists between Capitol and USA Environmental; and the amount in controversy exceeds \$75,000, exclusive of interest and costs.

6. Venue in this District is proper pursuant to 28 U.S.C. §1391 because a substantial part of the events giving rise to the claim occurred within this District.

Factual Allegations

7. This action arises out of a sewer back-up which occurred at the home of Rosanne Aviles and Dennis Losa, located at 8711 Higdon Drive, Vienna, Virginia (“the Home”) in March 2020. Aviles and Losa contracted with Kapusaba, LLC d/b/a ServPro of North Arlington (“Kapusaba”) and Smart Restoration Services, LLC d/b/a ServPro of North Arlington (“ServPro”), to clean up the sewage spill.

8. During the course of the cleanup Kapusaba and ServPro identified that basement tiles and mastic in the Home contained asbestos and proposed removal of the tiles and mastic to the homeowners.

9. With the homeowners’ agreement to removal of the asbestos-containing materials, they entered into a contract with Kapusaba and ServPro for the asbestos removal.

10. Kapusaba and ServPro subcontracted with Defendant USA Environmental, LLC for the asbestos abatement.

11. Over the course of several days from late August into early September 2020, USA Environmental removed the asbestos tile and mastic, using a grinding method, which released asbestos dust into the air.

12. Rosanne Aviles and Dennis Losa alleged that the work area was not securely closed off and that their home and furnishings were covered in a fine white dust including two floors above the basement.

13. Testing of the dust showed positive for chrysotile asbestos in several areas of the home.

14. Asbestos dust was able to leave the basement where the work was being preformed by USA Environmental because the containment area was not kept secure during the work and a supply duct for the HVAC system was not properly closed off, allowing the dust to enter the HVAC system, then distributed further once that system was returned to operation.

15. Aviles and Losa sued Kapusaba and ServPro in the United States District Court for the Eastern District of Virginia, Case No. 1:22-cv-01071 (“ the Aviles Case”).

16. Kapusaba and ServPro were insured by Capitol under an Environmental Policy for the period of January 1, 2022 to December 31, 2022.

17. Plaintiff Capitol undertook the defense of Kapusaba and ServPro in the Aviles Case.

18. In order to protect its insureds Kapusaba and ServPro, Capitol negotiated and funded a settlement of the Aviles Case for \$250,000 (“ the Settlement Payment”).

19. In this action, Capitol seeks reimbursement for the Settlement Payment to Aviles and Losa, because USA Environmental was the entity that failed to properly perform the asbestos abatement.

Count 1
Indemnification- Equitable

20. Capitol repeats and realleges the above allegations as fully set forth herein.

21. Defendant USA Environmental, LLC was negligent in the services that it provided to the Aviles and Losa Home, pursuant to the subcontract with Kapusaba and ServPro.

22. USA Environmental was solely responsible for the proper and safe undertaking of the asbestos abatement in the Home.

23. After thorough investigation and discovery, Capitol prudently resolved the Aviles Case to protect its insureds by funding the reasonable Settlement Payment, in exchange for a Release.

24. Defendant USA Environmental has been unjustly enriched at the expense of the Plaintiff Capitol by Capitol's discharge of liability that USA Environmental has the responsibility to pay.

25. USA Environmental, LLC is required to indemnify Capitol for the full amount of the Settlement Payment.

Count 2

Contribution

26. Capitol repeats and realleges the above allegations as fully set forth herein.

27. To the extent it is determined that liability in the Aviles Case is the result of shared negligence between Capitol's insureds Kapusaba and ServPro and the Defendant USA Environmental, then USA Environmental is required to contribute its proportionate share of the Settlement Payment.

WHEREFORE, Capitol requests the entry of Judgment against USA Environmental, LLC awarding Capitol the following relief:

- a) The full amount of the Settlement payment, in the amount of \$250,000, plus interest;
- b) Alternatively, USA Environmental LLC's proportional share of the Settlement Payment;
- c) Attorney's fees and expenses incurred in the defense of the Aviles Case;
- d) Attorney's fees and costs for bringing this suit; and
- e) Any other relief that his Court deems just and proper.

/s/ Margaret Fonshell Ward
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